

# Virginia Tax Amnesty Guidelines

In accordance with *Va. Code § 58.1-1840.1(C)*, this document establishes the guidelines and rules governing taxpayer participation in Virginia Tax Amnesty.

- A. Intent of Virginia Tax Amnesty.** Virginia Tax Amnesty is established to provide delinquent taxpayers with a fresh start, and to increase and accelerate the collection of delinquent taxes.
  
- B. Key Features of the Program.**
  - 1. Period of the program.** Virginia Tax Amnesty will run for a 63-day period, beginning on September 2, 2003, and ending on November 3, 2003.
  
  - 2. Waiver of penalties and interest.** For any Amnesty-eligible tax assessment or delinquent return liability, all penalty and half of the accrued interest will be waived upon payment of all tax due, plus half of the accrued interest. If an assessment or delinquent return is not eligible for Amnesty, there will be no waiver of penalty and interest.
  
  - 3. Taxes and taxable periods eligible for Amnesty.** A list of the taxes and periods eligible for Virginia Tax Amnesty is shown under Section C(2).
  
- C. Administration of Virginia Tax Amnesty.**
  - 1. Generally.** The Department of Taxation will administer Virginia Tax Amnesty. Any taxpayer who has tax assessments that are more than 90 days old as of the first day of Tax Amnesty, or delinquent returns for Amnesty-eligible periods [see Section C(2)], will be eligible for Amnesty benefits provided the taxpayer complies with the Virginia Tax Amnesty rules. Amnesty will be granted on a bill-by-bill or return-by-return basis.
  
  - 2. Eligible liabilities.** The specific taxes and taxable periods eligible for Virginia Tax Amnesty are listed in the following table. In general, the eligible taxes and filing periods are:
    - a. income tax returns of individuals, fiduciaries and corporations for taxable years beginning before January 1, 2002; and
  
    - b. business taxes (except for corporate income tax) and miscellaneous tax returns for taxable periods ending on or before April 30, 2003.

<b>Types Administered by Virginia Department of Taxation</b>	<b>Periods Eligible for Amnesty</b>
Aircraft Sales and Use Tax	Month of April 2003 and prior
Bank Franchise Tax	Taxable Year 2002 and prior (state portion only)
Cigarette Tax	Month of April 2003 and prior
Consumer's Use Tax	Month of April 2003 and prior
Corn Assessment	Quarter ending March 2003 and prior
Corporate Income Tax	Taxable Year 2001 and prior
Cotton Assessment	Quarter ending March 2003 and prior
Egg Excise Tax	Month of April 2003 and prior
Employer Income Tax Withholding	Month of April 2003 and prior
Estate Tax	Returns due by April 30, 2003 and prior
Fiduciary	Taxable Year 2001 and prior
Forest Products Tax	Quarter ending March 2003 and prior
Individual Income Tax	Taxable Year 2001 and prior
Litter Tax	Taxable Year 2002 and prior
Motor Vehicle Fuel Sales Tax	Month of April 2003 and prior
Peanut Excise Tax	Semi-Annual return 12/31/02 and prior
Probate Tax	Month of April 2003 and prior
Recordation Tax	Month of April 2003 and prior
Retail Sales Tax	Month of April 2003 and prior
Rolling Stock Tax on Railroads and Freight Car Companies	Taxable Year 2002 and prior
Sheep Assessment	Quarter ending March 2003 and prior
Small Grains Assessment	Quarter ending March 2003 and prior
Soft Drink Excise Tax	Taxable Year 2001 and prior
Tire Recycling Fee	Quarter ending March 2003 and prior
Use Tax	Month of April 2003 and prior
Vending Machine Sales Tax	Month of April 2003 and prior
Watercraft Sales and Use Tax	Month of April 2003 and prior
Writ Taxes	Month of April 2003 and prior

**3. Liabilities not eligible. The following are not eligible for Virginia Tax Amnesty:**

- a. Bills with an assessment date after June 4, 2003
- b. Delinquent individual and corporate income tax returns for taxable years beginning January 1, 2002, or later
- c. Delinquent business tax returns for periods beginning May 1, 2003, and later
- d. Obligations of taxpayers under criminal investigation or prosecution
- e. Jeopardy and fraud assessments

**4. Post-Amnesty Penalty assessment.** After the close of Virginia Tax Amnesty, any tax liability that was eligible for Amnesty relief but remains unpaid will be subject to a 20 percent penalty. The penalty applies to unpaid taxes only, and not to outstanding balances of penalty or interest. The 20 percent penalty will not be applied to the following:

- a. Assessments issued for additional amounts due on Amnesty - eligible returns that were filed in good faith, provided that the liability is paid within 30 days from the date of assessment.
- b. Any bill for which a payment plan was established prior to the beginning of the Amnesty period, provided the taxpayer has made timely payments before, during and after Amnesty and otherwise complies with the terms of the plan until the plan is successfully completed.
- c. Any bill for which a payment plan was established during the Amnesty period, provided the taxpayer makes timely payments and otherwise complies with the terms of the plan until the plan is successfully completed.
- d. Any Amnesty-eligible bill that is being appealed under *Va. Code* § 58.1-1821 during the Amnesty period provided the taxpayer pays the liability as determined by the Tax Commissioner within 30 days from the date of the final determination. If the taxpayer fails to satisfy the remaining liability within the 30-day period, the 20 percent penalty will be applied.
- e. Any Amnesty-eligible bill that is the subject of an offer in compromise under *Va. Code* § 58.1-105 during the Amnesty Period, provided that the taxpayer pays the remaining liability within the period specified in the Department's response to the

offer in compromise. If the taxpayer fails to satisfy the remaining liability within the specified period, the 20 percent penalty will be applied.

- f. Any Amnesty-eligible bill that is under informal appeal or protest, provided the taxpayer pays the amount determined to be owed within 30 days from the date of the Department's letter verifying the correct liability. If the taxpayer fails to satisfy the remaining liability within the 30-day period, the 20 percent penalty will be applied.
- g. Any taxpayer who is currently under the protection of the Federal Bankruptcy Court.
- h. Any bill or debt that is being addressed through a federal bankruptcy plan of reorganization.
- i. Any assessment generated from a field audit of a business for an Amnesty-eligible period, provided that the audit is the Department's first audit of the taxpayer, no penalty has been applied to the tax deficiency, any uncontested liability is paid within 30 days from the date of assessment, and payment for any contested liability remaining upon resolution of an appeal under *Va. Code* § 58.1-1821 is paid within 30 days from the date of the Tax Commissioner's final determination.
- j. Any assessment generated from a field audit of a business for an Amnesty-eligible period in cases where the audit is a second or subsequent audit of the taxpayer, provided that the Compliance Ratio is greater than 85 percent for sales tax and greater than 60 percent for use tax, no penalty has been applied to the tax deficiency, any uncontested liability is paid within 30 days from the date of assessment, and payment for any contested liability remaining upon resolution of an appeal under *Va. Code* § 58.1-1821 is paid within 30 days from the date of the Tax Commissioner's final determination.
- k. Any assessment for an Amnesty-eligible period for which the Tax Commissioner determines that sufficient justification exists for waiver of the 20 percent post-Amnesty penalty.

**5. Interest.** A simple interest rate of 9 percent will be used to determine the interest on previously unfiled returns or underreported income. Interest will be calculated from the due date of the return until September 2, 2003.

#### D. Rules of Virginia Tax Amnesty.

1. **Generally.** To receive the benefits of Amnesty, the taxpayer need only pay the tax and half of the interest for any Amnesty-eligible bill. A special application form is not required for Amnesty. Amnesty will be granted on a bill-by-bill basis. For any eligible nonfiler periods, the taxpayer need only file the return and pay the tax and half of the interest. Payments and returns must be postmarked by November 3, 2003 to be eligible for Amnesty.
2. **Account Adjustments.** Taxpayers are required to file by November 3 all relevant tax returns and associated documentation, such as statements of income, W-2's, etc. to justify the adjustment of an outstanding liability in the same manner as would have been required had returns been filed timely and properly.
3. **Amended Returns.** Taxpayers who underreported income, or overstated exemptions or deductions must file an amended return by November 3 to receive Amnesty benefits. Payment of any additional tax should accompany the return. Interest can be calculated using the **Interest Calculator** located on the web site, **[www.VaTaxAmnesty.com](http://www.VaTaxAmnesty.com)**. A link to this page will be available at the Department's Tax Amnesty web site, **[www.tax.state.va.us](http://www.tax.state.va.us)**.
4. **Returns Sent Without Payment.** Taxpayers who file returns, by November 3 without payment, will be assessed for any tax, penalty and interest due. If a taxpayer pays the assessment by Amnesty Rules (tax and half of the interest) by the end of the Amnesty period or within 30 days of the date the assessment was issued, whichever is later, the taxpayer will receive the benefits of Amnesty.
5. **Returns Sent With Insufficient Payment.** Taxpayers who send returns for an Amnesty-eligible tax and period with insufficient payment will be assessed for any additional tax, penalty and interest due. If the assessment is paid by Amnesty Rules (tax and half of the interest) by the end of Amnesty, or within 30 days of the date the assessment was issued, whichever is later, the taxpayer will receive the benefits of Amnesty.
6. **Converted Assessments.** Assessments which have been converted to responsible corporate officers under *Va. Code* § 58.1-1813, are eligible for Amnesty under the same Amnesty rules applicable to the corresponding business entity. Amnesty for responsible corporate officers will apply to bill balances in the same breakdown of tax, penalty, and interest as they are assessed to the business entity. If the bills from a business were converted to more than one officer, any officer may pay a bill by Amnesty Rules and all of the officers will then receive the benefits of Amnesty for that particular bill.

## **7. Payment Plans.**

- a. Taxpayers who are on established payment plans with the Department of Taxation or one of its outside collection agencies prior to the onset of Amnesty will be allowed to continue on those plans. They will not be subject to the 20 percent Amnesty penalty provided they remain current on their pre-existing plans. If the taxpayer fails to make timely payments or otherwise fails to comply with the terms of any pre-existing plan, the 20 percent penalty will be applied and no Amnesty benefits will be granted.
- b. Payment Plans may be established during Amnesty, and may extend beyond the Amnesty period. Payments received during the Amnesty period and for an additional six months after the formal close of Amnesty will be applied under Amnesty payment posting rules (tax and half of the interest due). Any bill that receives full payment of the tax and half of the assessed interest during the period described above will receive Amnesty benefits. Payments made after the period described above will be posted according to normal posting rules (tax, penalty and interest in full). If the taxpayer fails to make timely payments or otherwise fails to comply with the terms of any pre-existing plan, the 20 percent penalty will be applied and no Amnesty benefits will be granted.

## **8. Denials of Amnesty.** Amnesty will be denied for any of the following reasons:

- a. Taxpayer is under investigation or prosecution for filing a fraudulent return or failing to file or pay a return to evade the tax.
- b. The Department's records indicate that the taxpayer has been issued a jeopardy assessment or a fraud penalty assessment.
- c. Full payment under Amnesty Rules is not postmarked by November 3, 2003, except in the case of payments submitted under a payment plan or payments submitted under the terms of Sections D(4) or D(5) of these guidelines.

If Amnesty is denied, payments posted during the Amnesty Period will not be refunded.

## **9. Refunds.** Refunds for previously unfiled tax returns are subject to the three-year statute of limitations regarding refunds. Specifically, taxpayers may receive a refund (or credit towards other liabilities) for an overpayment reported on a previously unfiled return or amended return only if the return is filed within three years from the original due date of the return. Refunds will be issued to taxpayers who overpay their Amnesty

amount through oversight or miscalculation. All refunds issued in connection with Amnesty transactions are subject to offset against outstanding Virginia tax bills, as well as amounts owed to state and local government agencies and to the Internal Revenue Service.

- 10. Appeals under § 58.1-1821.** Taxpayers who have a pending appeal under *Va. Code* § 58.1-1821 on an Amnesty-eligible assessment may receive the benefits of Amnesty by paying the outstanding tax and half of the outstanding interest on the assessment. By choosing to pay under Amnesty Rules, the taxpayer will terminate the current appeal and waive the right to an additional administrative or judicial appeal on the respective tax and tax period receiving amnesty.
- 11. Offers in Compromise.** The offer in compromise process under *Va. Code* § 58.1-105 will continue during Amnesty, and taxpayers will be eligible for Amnesty treatment on qualifying assessments. A taxpayer may choose to terminate an offer on an Amnesty-eligible bill by paying the full tax and half the interest due under Amnesty Rules.
- 12. Collection Activity.** The Department will continue normal collection activities before, during, and after Amnesty. A taxpayer who chooses to wait to pay an assessment until Amnesty begins faces the risk of collection action. Audits, liens, padlockings, revocations, and pending court actions will not cease during Amnesty.
- 13. Changes to Guidelines.** The Tax Commissioner may add to or change these guidelines at any time during the Amnesty period. Changes to the guidelines shall be posted on the Amnesty web site at [www.VaTaxAmnesty.com](http://www.VaTaxAmnesty.com).

**Approved:**

**Kenneth W. Thorson**

---

Kenneth W. Thorson  
Tax Commissioner

September 2, 2003